IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 460 of 2000

Between:

Bathala Brahmam, S/o. Late Sri B.C.Veeranna, Senior Assistant,
Zilla Sainik Welfare Office, Cuddapah.

..... PETITIONER

AND

1 The Principal Secretary to Government, Home (Passports. C) Department, Government of Andhra Pradesh, Secretariat, Hyderabad-500 022.
2 The Director, Sainik Welfare, Lakdikapool, Hyderabad-500 004.
3 The Zilla Sainik Welfare Officer, Cuddapah, Cuddapah District.
4 The A.P. Administrative Tribunal, Rep. by its Registrar, Puranahaveli, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or Direction particularly one in the nature of Certiorari calling for the records on the file of the 4th Respondent herein in O.A.;No:7666 of 1997 apart from calling for the records from Respondents 1 & 3 herein in respect of fixation and re-fixation of his pay and quash the order of the 4th Respondent dated 13-10-1999 passed in O.A.No.7666/1997 and consequently allow his O.A., as prayed therein and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.T.P.ACHARYA

Counsel for the Respondents: GP FOR SERVICES-II

The Court made the following:

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ORAL ORDER: (By GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.7666 of 1997, dated 13.10.1999.

2. The petitioner challenged the recovery proceedings on the ground that the recovery was illegal and contrary to G.O.Ms.No.483, dated 22.12.1971. The learned Tribunal, after considering the matter, held that the petitioner challenged the recovery proceedings after nearly two decades and moreover he did not challenge the recovery proceedings when the recovery was in progress. In this regard it is relevant to quote the order passed by the Tribunal, which reads thus:

> "The applicant served in Army as Havaldar for 11 years and thereafter discharged from Army. He was appointed as Junior Assistant in Zilla Sainik Welfare Office, Cuddapah on 18.4.1977. In accordance with the various G.Os., referred to above, the pay of the applicant was correctly fixed and G.O.Ms.No.662, dated 4.11.1991 was issued along with consequential proceedings dated 16.12.1991 and the excess amount that was drawn by the applicant has already been recovered. The applicant approached the Tribunal for a direction to fix his pay in accordance with G.O.Ms.No.483, dated 22.12.1971 with effect from 18.4.1977 i.e., the date on which he was appointed as Junior Assistant with consequential benefits. If the relief is taken into consideration the delay in filing this O.A. will be about 22 years. The office calculated the delay of only 4 years 11 months and 29 days, but G.O.Ms.No.662 and consequential proceedings are issued in December, 1991. The applicant was silent and did not question the proceedings within the time prescribed. Even the excess amount that is said to have been paid to the applicant was recovered. Thereafter, the applicant thought of approaching this Tribunal for the relief with a delay petition. The applicant is estopped by conduct and record in questioning the impugned G.O. and the consequential proceedings as they have already taken effect and the applicant was silent when action was taken in accordance with those proceedings. According to the averments, it is clear that the

applicant want to take the benefit which is not permissible under the rules. The pay of the applicant was rightly fixed under G.O.Ms.No.662, dated 4.11.1991. He cannot claim fixation of pay as per G.O.Ms.No.483, dated 22.12.1971 with effect from 18.4.1977 onwards and such a relief cannot be granted to the applicant because of laches, delay and limitation. In view of the facts and circumstances of the case and the discussion referred to above, we are of the considered view that the applicant is not entitled for any relief in this O.A. Accordingly, we find no merits in the O.A. and it is accordingly dismissed. No costs".

Under those circumstances the Tribunal refused to grant any relief prayed for.

3. Though the learned counsel for the petitioner tried to convince this Court that when once the delay has been condoned, the question of laches working against the petitioner would not arise and therefore the order of the Tribunal is illegal and contrary to law.

4. We have also heard the learned Government Pleader for Services-II.

5. We are unable to agree with the contentions raised by the learned counsel for the petitioner. We find that when the recovery was sought to be effected, the petitioner ought to have approached the Court and got the appropriate relief, but the petitioner, for the reasons best known to him, waited till the entire recovery was effected and thereafter approached the Tribunal without any reasons. Therefore, we do not find there is any flaw in the order of the Tribunal. We do not find any merits in the Writ Petition.

6. In the result, the Writ Petition is dismissed. No costs.

(G.BIKSHAPATHY, J.)

23rd December, 2004.

(P.S.NARAYANA, J.)

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Principal Secretary to Government, Home (Passports. C) Department, Government of Andhra Pradesh, Secretariat, Hyderabad-500 022.
2 The Director, Sainik Welfare, Lakdikapool, Hyderabad-500 004.
3 The Zilla Sainik Welfare Officer, Cuddapah, Cuddapah District.
4 The Registrar, A.P. Administrative Tribunal, Puranahaveli, Hyderabad.

5 2 CCs to G.P. for Services-II, High Court of A.P. Hyderabad. (OUT)

6 2 CD copies.

*Form-NIC-OGS/WP{**KRD**}*